



MINUTES

Board of Zoning Appeals

May 17, 2010

4:00 P.M.

City Hall

Fredericksburg, Virginia

MEMBERS PRESENT

Helen P. Ross, Chair
Barry Waldman
Janet Sokol
Richard Friesner

MEMBERS ABSENT

Richard Conway, Vice Chair

STAFF

Debra M. Ward, Zoning Officer

Ms. Ross called the meeting to order at 4:00 p.m.

OPENING REMARKS

Ms. Ross determined that a quorum was present.

APPROVAL OF AGENDA

Ms. Ross asked if there were any additions or changes to the agenda.

Andrew McRoberts, of the law firm Sands and Anderson, said that since the Board was meeting for the sole purpose of deciding whether to hire him to represent them he would suggest adding the discussion of the Bragg Hill appeal, possibly in closed session, as an additional item.

Mr. Waldman made a motion to amend the agenda to add a discussion of the Bragg Hill appeal. Ms. Sokol seconded. The motion carried unanimously.

PUBLIC HEARING ITEM(S) - None

OTHER BUSINESS

1. Consideration of adoption of a motion to hire counsel for the Bragg Hill appeal.

Mr. McRoberts introduced himself to the Board. He said he has been a land use, local government attorney for many years and was very interested in the area of vested rights. The reason for the initial agenda item was for the BZA to hire counsel. He explained that the Council and City Attorney had essentially already hired him, but it was his practice to get the consent of the party he would represent. In addition, another attorney at Sands and Anderson, Phyllis Katz, also worked for the City on employment issues and the rules of professional responsibility and ethics suggest that a waiver of a joint representation would be appropriate.

Mr. Waldman asked if Ms. Katz was currently working for the City.

Mr. McRoberts said he did not think she was currently handling any manner for the City, but she is engaged to do so should something come up. He said technically a waiver may not be necessary, but ethically it would be better to have a waiver in place.

Ms. Sokol made a motion to retain Mr. McRoberts of the law firm Sands and Anderson to represent the BZA in the Bragg Hill vested rights appeal.

Mr. Waldman suggested an amendment to the motion to read that the Board acknowledge and waive any potential conflicts of interest emanating from the fact that another attorney from the law firm of Sands and Anderson regularly represents the City of Fredericksburg on unrelated employment matters.

Ms. Sokol accepted the amendment. Mr. Waldman seconded.

Ms. Ross called for the vote. The motion carried unanimously.

Mr. McRoberts thanked the Board and reiterated that he represented them specifically, not the City. He said that vested rights are a very complex issue and this particular case was fairly unique due to its age and the affirmative governmental act being alleged. He said he was still gathering information at this point, but he would like to discuss the case with the Board. He suggested that the Board make a motion to go into closed session per Code of Virginia Section 2.2-3711(A)(7) to receive the advice of legal counsel regarding the Bragg Hill vested rights case.

Mr. Friesner said, so moved. Mr. Waldman seconded. The motion carried unanimously.

The Board went into closed session.

The Board reconvened at 4:45 p.m.

The Board certified that only matters named in the closed session motion and exempted under the open meetings requirements of the Freedom of Information Act were discussed or considered.

The meeting adjourned at 4:48 p.m.

A handwritten signature in black ink, appearing to read "Helen P. Ross", written over a horizontal line.

Helen P. Ross, Chair